



12-19-11  
FILE COPY

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9612  
Fax (978) 264-9630

**Don P. Johnson**  
**Town Manager**

---

November 22, 2005

Crossroads Café  
Jay Manning, Manager  
405 Nagog Square  
Acton, MA 01720

Dear Mr. Manning:

The Board of Selectmen is in receipt of a report from the Middlesex District Attorney alleging a possible alcoholic beverage service violation at Crossroads, on May 5, 2005. As you will see in the attached letter from them, an intoxicated driver, when questioned, indicated to the Littleton Police that he had been served at your establishment prior to being arrested.

The Selectmen consider this to be a serious violation of the responsibilities of a liquor license holder in the Town of Acton and have ordered a Hearing to determine what action, if any, they will take in this regard. This is especially serious in light of the Board receiving two notices this year concerning your restaurant from the Middlesex District Attorney.

The Hearing is scheduled for 9:00 PM, on Monday, December 19, 2005 in the Francis Faulkner Hearing Room at the Acton Town Hall (second floor). You are requested to appear before the Board at that time to show cause as to why the Selectmen should not take action with respect to your license.

With regard to the upcoming hearing, that in addition to you, any individual (other than yourself) who may have been on duty and in charge at the time of the alleged May 12, 2005 violation be present and available for questioning by the Board.

Please phone me at (978) 264-9612 to confirm your December 19th hearing date.

Very truly yours,

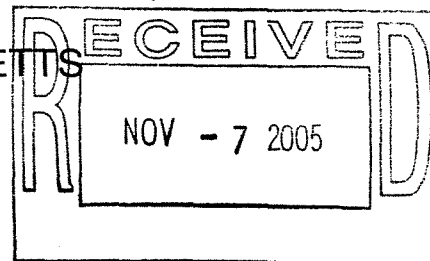
  
Christine Joyce  
Town Manager's Office

Cc: Police Chief



MARTHA COAKLEY  
DISTRICT ATTORNEY

THE COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX DISTRICT ATTORNEY  
40 THORNDIKE STREET CAMBRIDGE, MA 02141

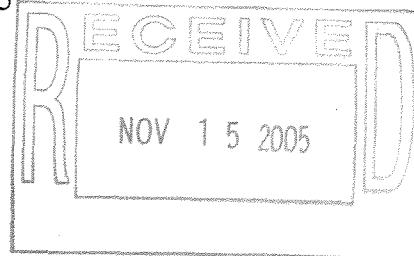


Tel: 617-679-6500  
Fax: 617-225-0871

CHRIS -

- 1) PLACE IN 11/18 PACKET.
- 2) SCHEDULE CROSSROADS FOR  
A MEETING W/BOS.

November 3, 2005



Board of Selectmen  
472 Main Street  
Acton, MA 01720

Dear Sir/Madam:

Please be informed that the Middlesex District Attorney's Office was notified pursuant to G.L. c. 90, § 24J, that [REDACTED] informed the Ayer District Court that, prior to committing a motor vehicle violation which involved driving under the influence of intoxicating liquors, he was served alcohol on 5/12/05 at the following establishment licensed to serve alcohol:

Crossroads Café  
405 Nagog Square  
Acton, MA 01720

It is my belief that alcohol and substance abuse is a problem of major proportions in Middlesex. More specifically, the combination of such abuse and driving a motor vehicle is a threat to the lives and safety not only of the abuser, but also of the general public.

This letter is not meant to accuse the establishment of criminal or negligent conduct. The defendant's statement was not made under oath and may or may not be reliable. Nevertheless, because of the importance of the drunk driving issue, we bring this information to your attention for whatever action you may deem appropriate.

Sincerely,

John McEvoy *mm*

John McEvoy  
First Assistant District Attorney

On 5/12/05 at approximately 0026, I, Officer Jack Hebert, responded to a reported motor vehicle accident on Nashoba Road. Nashoba Road is a public way. Upon arrival in the area, I observed a male walking down Nashoba Road. I stopped and asked this male if he was involved in the accident. He stated he was and was identified as [REDACTED] (DOB 4/17/74 - SS# [REDACTED]). [REDACTED] stated he was operating the vehicle and was alone. As I spoke to [REDACTED], I detected an odor of alcoholic beverages coming from his breath. His eyes were also observed to be bloodshot and glassy. I then transported [REDACTED] back to the scene of the accident. I observed a brown Toyota Camry, Massachusetts registration 54791D1, perpendicular in the roadway across the south bound travel lane with heavy front end damage.

I exited my cruiser and spoke to [REDACTED]. I asked [REDACTED] if he was injured and he stated he was not. I asked [REDACTED] if he had been drinking and he first stated he had 1 cocktail. During this conversation he seemed confused as to how much he had actually consumed. [REDACTED] originally told me he had 1 cocktail, then 2 drinks and then changed the amount again to 1 glass of wine at work. I asked him to perform field sobriety tests. Since the roadway was shut down, field sobriety tests were conducted in the middle of Nashoba Road under a street light. The solid yellow center line was used for these tests. Tests were conducted in the following order.

Horizontal Gaze Nystagmus - [REDACTED] were contacted, however his eyes tracked equally. He lacked smooth pursuit in both eyes and had noticeable nystagmus at and prior to 45 degree as well as at maximum deviation. In my estimation, [REDACTED] failed this test.

Walk and Turn - [REDACTED] had no injuries that would hinder his ability to perform these tests and his footwear was comfortable. [REDACTED] was unable to maintain the pre-test position. He did not touch heel to toe on any of his steps, rather he walked in a normal manner. He stepped off of the solid yellow center line on number [REDACTED] and raised his arms from his sides. In my estimation, [REDACTED] failed this test.

One Leg Stand - [REDACTED] stood on his left foot. [REDACTED] swayed from side to side as he performed this test and raised his arms from his sides. In my estimation, [REDACTED] failed this test.

[REDACTED] was placed under arrest and secured in the rear of my cruiser. I transported him to the station and he was photographed, fingerprinted and booked. During booking an orange smoking pipe containing burnt residue I found to be consistent, through my training and experience, with that of burnt marijuana. A pill bottle was also found containing marijuana seeds. [REDACTED] was also charged with possession of class D substance, marijuana. [REDACTED] consented to a breathalyzer and supplied 2 sufficient breath samples with results of .12 and .11, with a calibration check of .15.

## Littleton Police Department

Page: 1

## NARRATIVE FOR PATROLMAN JACK HEBERT

Ref: 05-92-AR

Entered: 05/12/2005 @ 0430 Entry ID: 12JH  
Modified: 05/14/2005 @ 1322 Modified ID: 29RR  
Approved: 06/03/2005 @ 0737 Approval ID: 29RR

The following is a summary of events of 5/12/05 at 0026. The weather was warm, clear and the roads were dry. Visibility was excellent. While on full uniform patrol in a marked cruiser for the Town of Littleton I, Officer Jack Hebert, had occasion to respond to Nashoba Road for a report of a motor vehicle accident. The operator of the vehicle involved, [REDACTED] (DOB 4/17/74 - SS# [REDACTED]), was subsequently placed under arrest for operating under the influence of alcohol and possession of class D substance, marijuana.

While on patrol, dispatch advised that the resident at 7 Nashoba Road, identified as Mary P. Crory (DOB [REDACTED] - SS# [REDACTED]), called 911 reporting a possible motor vehicle accident. Nashoba Road is a public way. Dispatch advised that Crory heard the crash, however she could not see the vehicle. As I was enroute to Nashoba Road, dispatch received a call from the resident at 13 Nashoba Road, identified as Carolyn McHugh (DOB [REDACTED] - SS# [REDACTED]). McHugh was also reporting an accident and stated that she could see the vehicle. McHugh reported that she could see the vehicle and hear it trying to start. McHugh also reported that the headlights were shut off and the hazard lights were turned on.

Upon my arrival in the area, I observed a male walking down Nashoba Road, in front of number 7, away from the area where the accident was reported. I stopped and asked this male if he was involved in the accident. He stated that he was. I asked if he was injured and he stated he was not. I then had him enter the rear seat of my cruiser and transported him back to the scene of the accident. Upon arriving on the scene of the accident, in front of number 13, I observed a brown Toyota Camry across the roadway. I advised dispatch that I was out. I exited my cruiser and opened the rear door of my cruiser, letting the operator out. Just prior to exiting my cruiser, I noted an odor of alcoholic beverages within my cruiser, that was not there prior to having the operator in the rear seat. I spoke briefly with the operator and asked him for his license. I observed him to remove his wallet from his right rear pants pocket and attempt to remove his license. I noted that he had difficulty removing his license from his wallet. After removing his license from his wallet, he handed it to me, identifying himself as [REDACTED] (DOB 4/17/74 - SS# [REDACTED]). I asked [REDACTED] if he was operating the vehicle and he stated he was. I asked if he was alone in the vehicle and he stated he was. I then left [REDACTED] and walked over to his vehicle. I advised dispatch of the registration, Massachusetts 5479DI, and advised dispatch that [REDACTED] was the operator. I also requested a tow for the vehicle, as it had heavy front end damage, leaking fluids and was clearly not drivable. Dispatch advised that McLaughlin's Towing would be enroute.

I noted that from the skid marks on the roadway and the location of the vehicle, it appeared [REDACTED] came around the corner on Nashoba Road, heading south from Great Road, crossed over into the north bound travel lane and struck a large tree on the north bound shoulder. The vehicle then bounced off of the tree and came to rest perpendicular across the roadway. (see photos and Officer Raffaello's accident report #05-119-AC)

I returned to where [REDACTED] was standing and asked where he was coming from and what happened, [REDACTED] could only say that he was coming from work. I observed [REDACTED]'s eyes to be glassy and bloodshot. I also detected an odor of alcoholic beverages coming from his breath, as the odor got stronger as he spoke. I asked [REDACTED] if he had been drinking and he stated he had 1 cocktail. I asked if the vehicle was registered to him and he stated it was not, it was registered to his mother. I asked [REDACTED] if he would perform field sobriety tests. [REDACTED] did not answer and stated that he only had 2 drinks. I advised [REDACTED] that he told me before he had 1 cocktail. [REDACTED] then stated that he only had 1 glass of wine while he was working. [REDACTED] was later determined to be a waiter at the Quarterdeck in Maynard, however he was coming from Crossroads in Acton. I again asked [REDACTED] to perform field sobriety tests. [REDACTED] then agreed to perform the tests. I shut off my front facing strobe lights and asked [REDACTED] to put his backpack on the hood of my cruiser. I then escorted [REDACTED] to the other side of his vehicle. I noted that as [REDACTED] walked he appeared to be unsteady on his feet, as he shuffled his feet. Nashoba

## Littleton Police Department

Page: 2

NARRATIVE FOR PATROLMAN JACK HEBERT

Ref: 05-92-AR

Entered: 05/12/2005 @ 0430 Entry ID: 12JH  
Modified: 05/14/2005 @ 1322 Modified ID: 29RR  
Approved: 06/03/2005 @ 0737 Approval ID: 29RR

Road was closed down due to the accident. Field sobriety tests were performed in the following order, in the middle of the roadway, under a street light, using the yellow solid center line as a guide for the 9 step walk and turn. This area of the roadway is flat, paved and free of defects. Officer Raffaelo arrived on scene and tended to the vehicle, as I administered the tests.

Horizontal Gaze Nystagmus - The first test I administered was the Horizontal Gaze Nystagmus Test. I asked [REDACTED] to stand with his feet together and with his hands by his sides. I noted that as he stood in this position, he was swaying from side to side and back and forth. I then held my left index finger up in front of his face and asked if he could see it. [REDACTED] stated he could. I asked if he wore contacts or glasses and he stated he wore contacts. I advised him to follow the tip of my finger with his eyes only and to keep his head still. I administered the test and noted several times that I had to remind him to keep his head still. I checked for equal tracking then administered the test. I observed [REDACTED] to lack smooth pursuit in both eyes, have noticeable nystagmus at and prior to 45 degrees, as well as at maximum deviation. In my estimation, [REDACTED] failed this test.

Walk and Turn - The second test I asked [REDACTED] to perform was the 9 Step Walk and Turn Test. I first asked [REDACTED] if he had any injuries that would hinder his ability to perform these tests. [REDACTED] stated he did not. I asked [REDACTED] if his footwear, flat bottomed shoes, were comfortable enough to perform these tests in, [REDACTED] stated they were. I asked [REDACTED] to stand on the center line with one foot in front of the other, touching the heel of his front foot to the toe of his rear foot. [REDACTED] was able to get into this position, however he was only able to maintain it for a brief period of time. I advised him to get back into this pre-test position, however he was again unable to maintain it. I then advised him to just stand in a normal manner. I explained the test to him, then demonstrated it. I instructed [REDACTED] to take 9 steps along the yellow line, towards his vehicle, by placing one foot in front of the other, touching the heel of his front foot to the toe of his rear foot. He was further instructed to then make a small half circle turn and take 9 steps back along the yellow line, in the same heel to toe manner, while counting his steps out loud and keeping his hands by his sides. I then demonstrated the test to him and asked if he understood it. [REDACTED] stated he did. I then advised him he could start the test when he was ready. [REDACTED] began the test and immediately raised his arms from his side. I observed him to step off of the line on step number 7 and observed that he was not touching heel to toe on all his steps. On his return steps, he was placing one foot in front of the other on the yellow line, however I noted an approximated 6 inch gap between his heel and toe. In my estimation, [REDACTED] failed this test.

One Leg Stand - The second test I asked [REDACTED] to perform was the One Leg Stand Test. I instructed him to stand on one leg, which ever he chose, and raise the other straight out in front of him, so his heel was approximately 6 inches off of the ground. He was also instructed to keep his hands by his sides and count out loud to 30 by one thousands, as he maintained his balance. I demonstrated the test for him and asked if he understood it. [REDACTED] stated he did. I then advised him he could start the test when he was ready. [REDACTED] stood on his left foot and maintained his balance for the entire 30 count, without placing his foot on the ground. However, I noted that he was swaying from side to side and had his arms raised from his sides as he performed this test. In my estimation, [REDACTED] failed this test.

Preliminary Breath Test - I offered a Preliminary Breath Test to [REDACTED] and he asked what would happen if he did not take it. I advised him my opinion of his intoxication would be based on the other field sobriety tests he performed and that fact that he got in an accident. He then paused for about a minute and asked again what would happen if he did not take it. I advised him that I just explained it to him. [REDACTED] looked confused and stated "No you didn't." I again advised him that I would form an opinion on his level of intoxication based on the other field sobriety tests. [REDACTED] then stated he did not want to take the Preliminary Breath Test.

## Littleton Police Department

Page: 3

NARRATIVE FOR PATROLMAN JACK HEBERT

Ref: 05-92-AR

Entered: 05/12/2005 @ 0430 Entry ID: 12JH  
Modified: 05/14/2005 @ 1322 Modified ID: 29RR  
Approved: 06/03/2005 @ 0737 Approval ID: 29RR

I handed the machine to Officer Raffaello and advised [REDACTED] that based on the motor vehicle accident, his performance on the field sobriety tests, as well as his appearance and the odor of alcoholic beverages, I formed the opinion that he was operating the motor vehicle while under the influence of alcoholic beverages. I then advised him he was being placed under arrest for this offense. He was handcuffed, searched and secured in the rear of my cruiser. I put his backpack in the front seat of my cruiser, put a flare out for Officer Raffaello's safety, then cleared the scene and transported [REDACTED] to the station. Officer Raffaello remained on scene and tended to the accident.

At the station, I issued citation number M0200771 to [REDACTED] for operating under the influence of alcohol. A search of his backpack was completed. While searching his backpack, I located an orange glass smoking that, through my training and experience, I found to be consistent with that of a pipe used to smoke marijuana. Contained in the pipe was burnt residue and some small green leafy pieces that, through my training and experience, I found to be consistent with that of marijuana. A small orange pill bottle was also found containing burnt rolling papers. Inside a blue bottle were some seeds that, through my training and experience, I found to be consistent with marijuana seeds. [REDACTED] was advised that he was also going to be charged with possession of class D substance, marijuana. Citation number M0200772 was issued for administrative purposes only for this offense. I advised [REDACTED] of his statutory rights and read him the "statutory rights and consent form." After approximately 20 minutes of [REDACTED] asking questions about criminal penalties, he agreed to submit to a breathalyzer. I administered the test with results of .12 and .11 with a calibration check result of .15. He was then booked, photographed and fingerprinted for these offenses. He then placed a call to his father. [REDACTED] was advised of his results and was issued a temporary license and notice of suspension. I noted that during booking, [REDACTED] had a very carefree attitude. [REDACTED] was talking about tomorrow's weather and asking me if I liked scallops, since he worked at a seafood restaurant. The Bail Commissioner was paged and bail was set at \$40. Commissioner Allen later arrived at the station and bailed [REDACTED] to the custody of his father, Peter [REDACTED] (DOB 8/1/40 - SS# [REDACTED]). The seeds, pipe and rolling papers were entered into evidence for analysis.

At approximately 0540, Officer Raffaello and I returned to Nashoba Road to take photos of the accident location. At this time, in the daylight, it was determined that [REDACTED] was traveling south on Nashoba Road around the corner in front of number 7. [REDACTED] crossed into the north bound travel lane, leaving approximately 140 feet of yaw marks in the north bound lane, before crossing back into the south bound lane. Yaw marks are caused when the front tires are turned and being pushed by the rear tires, due to excessive speed. [REDACTED] crossed back into the south bound lane and slid sideways for approximately 150 feet, in both the south and north bound travel lanes, before crossing back into the north bound lane and striking a tree on the north bound shoulder. This section of Nashoba Road is a posted 25 mile per hour zone. After observing these yaw and skid marks, it's apparent that Keane was traveling well over the posted 25 mile per hour speed. Therefore operating negligently and creating an unnecessary danger to other people and should have been charged accordingly. I issued citation number M0200773 to [REDACTED] as a criminal application, to served at his arraignment, for negligent operation of a motor vehicle.

Respectfully Submitted,  
Ptl. Jack Hebert #12